



March 30, 2000

Ms. M. Shannon Kackley
Assistant City Attorney
City of Garland
P O Box 469002
Garland, Texas 75046-9002

OR2000-1246

Dear Ms. Kackley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134132.

The City of Garland Police Department (the "department") received a request for "all records relative to the complaint" filed by a named individual against a named police officer. You have submitted for our review the "Internal Affairs file" of the named officer. You assert that this information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you assert and reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the information at issue is made confidential by section 143.089 of the Local Government Code.¹ In relevant part, this provision states:

(a) The [civil service] director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

¹This provision applies only to civil service cities. We therefore assume that the City of Garland is a civil service city.

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and 143.089(c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g), which states:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in a department's internal file maintained pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. Based on your representations that the information at issue constitutes the "Internal Affairs file" of the named police officer, and that such files "are maintained by [the department] as part of each officer's departmental personnel file maintained for departmental

use,” we find that all of the documents submitted for our review are contained in a personnel file of the named police officer that is maintained by the department for its own use pursuant to section 143.089(g). We therefore agree that the requested information is confidential pursuant to section 143.089(g) and must be withheld from disclosure under section 552.101 of the Government Code.

We note that Section 143.089(e) grants a right of access to a fire fighter or police officer to “any letter, memorandum, or document placed in the person’s personnel file.” *See* Local Gov’t Code § 143.089(e). The requestor in this instance is an attorney representing the named police officer. However, this office has interpreted this provision to grant a right of access only to the information in the personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 3 (1996) (the confidentiality provision of section 143.089(g) contains no exceptions).

In summary, we conclude that the requested information in its entirety is excepted from disclosure under section 552.101 of the Government Code in conjunction with subsection 143.089(g) of the Local Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

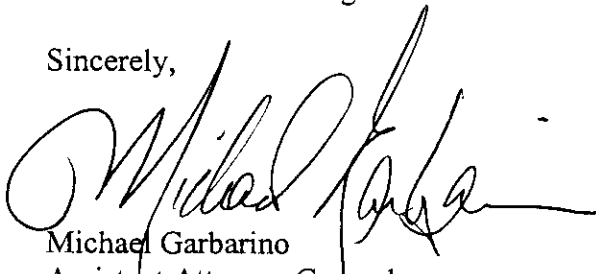
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 134132

Encl. Submitted documents

cc: Mr. Bob Gorsky
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(w/o enclosures)